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RULEMAKING ESTABLISHING	§	BEFORE THE
ELECTRIC WEATHERIZATION	§	PUBLIC UTILITY COMMISSION
STANDARDS	§	OF TEXAS

**TEXAS INDUSTRIAL ENERGY CONSUMERS' COMMENTS ON THE
RULEMAKING TO ESTABLISH ELECTRIC WEATHERIZATION STANDARDS**

I. INTRODUCTION

Texas Industrial Energy Consumers (TIEC) appreciates the efforts of Staff and the Commission to develop a workable process for implementing weatherization requirements within the statutory deadlines established by Senate Bill 3. TIEC values the iterative drafting process and opportunity for stakeholder input. TIEC members are large consumers of electricity that depend on a reliable electric grid to support their businesses. In addition, many TIEC members own and operate on-site generation facilities that actively participate in the market, are registered as Power Generation Companies (PGCs), and will be subject to these weatherization requirements. As a result, TIEC is seeking a balanced, workable rule that improves winter preparedness without imposing unachievable requirements on PGCs.

On the whole, TIEC views the Proposed Rule as a significant improvement over the strawman rule. In particular, the phased approach envisioned by the Proposed Rule allows initial requirements to be established for this winter while the Commission gathers more data to inform meaningful winterization standards going forward. TIEC also appreciates the modifications to the definition of “generation entity” in response to TIEC’s last set of comments, clarifying that the rule does not apply to Resource Entities insofar as they represent Self-Generators that do not actively participate in the wholesale market.¹

¹ Texas Industrial Energy Consumers’ Comments on Staff’s Draft Rule and Questions at 4-5 (July 30, 2021).

TIEC believes there are still several areas where the Proposed Rule can be improved or clarified. These proposed changes are addressed below, and a separate Executive Summary has been provided along with these comments.

A. The “Generation Resource” definition should include the generating facility and “auxiliary” facilities, but not distinct manufacturing processes that might be considered “associated.”

The proposed definition of “Generation Resource” has been modified to also include “associated facilities” behind the generator’s point of interconnection. While TIEC understands the intent behind this change, TIEC recommends further refining the definition to reference “auxiliary” facilities instead, which would exclude distinct manufacturing processes. “Auxiliary” is generally defined as providing supplemental or additional help and support and is a commonly understood term for generating facilities. This change will avoid disputes about whether other industrial facilities that consume steam or may otherwise be electrically connected to a cogeneration unit are also required to weatherize, and to what standard.

Most industrial sites include numerous manufacturing processes that are integrated in complex and dynamic ways. Specifically, many sites have gas-fired cogeneration that provides both electricity and steam to multiple on-site manufacturing processes.² Typically these cogeneration facilities must have a steam off-taker to produce power; however, which specific process is using that steam may change depending on the circumstances, and it is not easy to identify in the context of the Proposed Rule which facilities might be considered “associated.” Further complicating matters, the steam hosts for a cogeneration facility are often owned by third-parties that the PGC itself does not own and cannot control. These reasons, among others, are why PURA § 39.151(l) has long provided that “[n]o operational criteria, protocols, or other requirement established by an independent organization, including the ERCOT independent system operator, may adversely affect or impede any manufacturing or other internal process operation associated with an industrial generation facility, except to the minimum extent necessary to assure reliability of the transmission network.”

² See PURA 37.0521 (authorizing sales of steam and electricity to multiple steam hosts within ERCOT).

The rule does not contemplate standards for “associated” manufacturing processes or provide any guidance on what might be required. TIEC also does not believe that including “associated” manufacturing processes will improve grid reliability relative to the status quo, given the strong incentive that businesses already have to ensure that their manufacturing processes are able to run through extreme weather conditions. To address these concerns, TIEC suggests modifying the definition of “generation resource” as follows:

Generation resource – A generator capable of providing energy or ancillary services to the ERCOT grid that is registered with ERCOT as a generation resource, as well as ~~associated~~ auxiliary facilities behind the generator’s point of interconnection necessary for the operation of the generator.

TIEC believes that referring to “auxiliary” facilities more closely ties the scope of a “generation resource” to equipment that is integral to the generation unit itself, while excluding other, non-generation facilities that may operate in concert with a cogenerator.

B. The Commission should allow tailored requirements within the “good cause exception” as justified by the facts, in addition to delays.

TIEC appreciates the addition of a “good cause exception” provision in the Proposed Rule and believes some process to consider a generating facility’s specific facts is essential. As discussed in TIEC’s prior comments, there will potentially be situations where complying with the weatherization standards in this rule would be technologically infeasible, cost prohibitive, or accelerate a potential retirement decision for an existing generation unit. Ignoring such situations could end up degrading reliability, working at cross purposes with the intent of this rule. However, proposed § 25.55(c)(6)(A)(iii) implies that a good cause exception will only delay a generation entity’s deadline to comply with the rule’s specified weatherization requirements. The proposed rule does not provide a clear avenue for the Commission to modify specific winterization requirements as demanded by the circumstances of particular generation resources.

To address this issue, TIEC recommends that the Commission implement a process for an existing unit to petition for a tailored weatherization plan or specific exemptions or modifications to the general requirements. This will allow the Commission to weigh the reliability benefits of weatherization against potential adverse outcomes for generators in the limited cases where the

default standard would create an undue burden. While TIEC believes such good cause exceptions should be used sparingly, the Commission should retain clear flexibility to consider the particular circumstances. To implement this suggestion, TIEC proposes the following language:

(c)(6) **Good cause exception.** A generation entity may submit a request for a good cause exception with the commission to specific requirements listed in paragraph (1) of this subsection.

(A) A generation entity's request must include:

...

(iii) A plan, including a schedule and supporting documentation, to comply with the specific requirement of paragraph (1) of this subsection for which the good cause exception is being requested from the commission, or a request for modification or waiver of a specific requirement. If requesting a modification or waiver, the generation entity must prove that compliance with the specific requirement of paragraph (1) would be technologically infeasible, create an unjustified financial burden relative to the reliability benefits, or would have an undue adverse impact on operations at an industrial site. The generation entity must include ~~including~~ a proposed deadline or deadlines for filing updates with the commission on the status of the generation entity's compliance with the specific requirement of paragraph (1) of this subsection, or compliance with a modified version of that requirement, if applicable, and expected compliance date;

C. The rule should require adequate preparation for extreme weather, but not penalize entities for issues that are outside of their control.

As Calpine suggested in prior comments, TIEC believes the Proposed Rule should set a “preparation standard, not a performance standard.”³ Compliance with the rule should be determined based on whether a generation entity takes the steps required to reasonably winterize its facilities, and not just the end result, which may be impacted by factors beyond the owner's control.

Specifically, the proposed rule requires generation entities to complete “[a]ll preparations necessary to ensure the sustained operation of all cold weather critical components during winter

³ Calpine Corporation's Comments to Commission Staff's Discussion Draft and Questions at 7 (July 30, 2021).

weather conditions.”⁴ The word “ensure” suggests that generation entities could be held at fault if cold weather critical components fail during winter weather conditions, regardless of the reasons for that failure and the generator’s efforts to prepare to run. TIEC does not believe that a generation entity should be penalized for failures that are beyond its control and is concerned about the perceived risk this might create for those seeking to invest or continue operating in ERCOT. Failures can occur for a variety of reasons, including frequency events and mechanical defects, and can occur even when components are within their operating limits. ERCOT’s competitive market naturally imposes financial penalties on generation entities that fail to perform during reliability events, and the requirements of the Proposed Rule will only strengthen that incentive. As a result, TIEC believes the Commission and ERCOT should focus their oversight activities on ensuring that generators take appropriate steps to reasonably winterize their generation units before cold weather occurs, rather than penalizing generators for the ultimate outcome on the backend.

To that end, rather than requiring generation entities to “ensure” sustained operation of cold weather critical components, TIEC suggests that § 25.55(c)(1)(A) read as follows:

(c)(1) By December 1, 2021, a generation entity must complete the following winter weather emergency preparations for each resource under its control:

(A) All preparations necessary to ~~ensure~~ allow the sustained operation of all cold weather critical components during winter weather conditions, such as chemicals, auxiliary fuels, and other materials, and personnel required to operate the resource;

D. The rule should allow any officer or executive with authority to execute the notarized attestation.

The Commission should consider allowing any officer or executive with authority to bind a generation entity to attest to the entity’s winter weather readiness report or application for a good cause exception.⁵ Often, the “highest-ranking official” within an organization may not have direct

⁴ Proposed Rule at § 25.55(c)(1)(A) (emphasis added). Similar language also appears at § 22.55(F)(1)(A)-(B).

⁵ Proposed 16 TAC § 25.55 (c)(2)(B) provides, “Includes, a notarized attestation sworn to by the generation entity’s highest-ranking representative, official, or officer with binding authority over the generation entity, attesting to the completion of all activities described in paragraph (1) of this subsection and the accuracy and veracity of the information described in subparagraph (2)(A) of this subsection,” and proposed 16 TAC § 25.55 (c)(6)(A)(v) provides,

responsibility for weatherization or day-to-day operations, and may have no direct knowledge of the weatherization requirements or needs for a particular generation resource. Requiring the executive officer limits the Generation Entity's discretion to assign this responsibility to the appropriate person within the organization. For these reasons, TIEC recommends that the final rule permit more knowledgeable, directly accountable senior officers, such as a Senior Power Operations Officer or a plant's Senior Manager, to execute the sworn attestation, provided they have authority to bind the generation entity.

As Calpine explained in its comments, requiring an attestation from any officer or executive with authority to bind the company creates the same incentive to ensure compliance with the PUC's weather preparedness measures.⁶ Allowing other officers with direct responsibility for operations and weatherization to execute the attestation would also be consistent with compliance and other weatherization preparedness requirements under ERCOT's Nodal Protocols.⁷ As such, broadening who can execute an attestation under the rule would make the attestation more meaningful and practical, and would avoid requiring an executive officer to attest to facts that he or she may not know personally.

TIEC suggests the following changes:

(c)(2)(B) Includes, a notarized attestation sworn to by ~~the generation entity's highest ranking representative, official, or officer with binding authority over an~~ officer or executive with authority to bind the generation entity, attesting to the

"A notarized attestation sworn to by the generation entity's highest-ranking representative, official, or officer with binding authority over the generation entity attesting to the accuracy and veracity of the information in the request."

⁶ Calpine Corporation's Comments to Commission Staff's Discussion Draft and Questions at 11 (July 30, 2021).

⁷ See ERCOT Nodal Protocols Section 3.21(3) ("...The [Declaration of Completion of Generation Resource Winter Weatherization Preparations] shall be executed *by an officer or executive with authority to bind* the Resource Entity.") (emphasis added); see also Section 3.13.1.19 (3)(c) ("...The calculation of the accelerated depreciation as described herein must be supported by an attestation executed *by an officer or executive with the authority to bind* the Resource Entity or the QSE representing the Resource Entity.") (emphasis added); Section 4.4.6.3 (3) ("...The attestation [for a PTP Obligation bid] must be executed *by an officer or executive with authority to bind* the NOIE, and submitted to ERCOT.") (emphasis added); Section 5.6.5.1 (1)(b)(i) ("An attestation signed by *an officer or executive with authority to bind* the QSE stating that the information contained in the [Resource Make-Whole Payment] submission is accurate;") (emphasis added); Section 16.16.2(1) ("Each Counter-Party must submit to ERCOT annually a notarized certificate signed by *an officer or executive with authority to bind* the Counter-Party ...to Meet ERCOT Additional Minimum Participation Requirements....") (emphasis added).

completion of all activities described in paragraph (1) of this subsection and the accuracy and veracity of the information described in subparagraph (2)(A) of this subsection.

(c)(6)(A)(v) A notarized attestation sworn to by ~~the generation entity's highest-ranking representative, official, or officer with binding authority over~~ an officer or executive with authority to bind the generation entity attesting to the accuracy and veracity of the information in the request.

II. CONCLUSION

TIEC appreciates the opportunity to comment on the Proposed Rule and has found significant value in this phased comment process. TIEC looks forward to working with the Commission and stakeholders to develop a final rule.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John R. Hubbard, Attorney for TIEC, hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 16th day of September 2021 by hand-delivery, facsimile, electronic mail and/or First Class, U.S. Mail, Postage Prepaid.

/s/ John R. Hubbard

John R. Hubbard

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**TEXAS INDUSTRIAL ENERGY CONSUMERS' COMMENTS ON THE
RULEMAKING TO ESTABLISH ELECTRIC WEATHERIZATION STANDARDS**

Executive Summary

- TIEC views the Proposed Rule as an improvement and appreciates the modifications to the definition of “generation entity” in response to TIEC’s last set of comments, clarifying that the rule does not apply to Resource Entities insofar as they represent Self-Generators that do not actively participate in the market.
- TIEC recommends refining the definition of “Generation Resource” to reference “auxiliary” facilities rather than “associated” facilities. This change will avoid disputes about whether industrial facilities that are integrated with a cogeneration unit or consume a cogenerator’s steam are also required to weatherize, and to what standard.
- As written, the “good cause exception” provision only allows a generation entity to delay its compliance with the weatherization standards and does not provide a clear avenue for the Commission to modify specific winterization requirements to accommodate the circumstances of particular generation resources. TIEC recommends that the Commission implement a process for an existing unit to petition for a tailored weatherization plan or specific exemptions or modifications to the general requirements. This would allow the Commission to consider situations where complying with weatherization standards would be technologically infeasible, cost prohibitive, or accelerate a potential retirement decision for an existing generation unit.
- Compliance with the rule should be determined based on whether a generation entity takes the steps required to reasonably winterize its facilities, and generation entities should not be penalized for lack of performance, which may be impacted by factors beyond their

control. As such, TIEC suggests that the rule mandate all preparations necessary to “allow,” rather than “ensure,” the sustained operation of all cold weather critical components.

- The Commission should consider allowing any officer with the authority to bind a generation entity to attest to a winter readiness report or application for a good cause exception. This approach would be consistent with compliance and other weatherization preparedness requirements under ERCOT’s Nodal Protocols, and it would make the attestation more meaningful because it avoids requiring an executive officer to attest to facts that they may not know personally.